

IRS Clarifies Office of Appeals Policies – Frequently Asked Questions

1. In a Collection case, when will Appeals send information to Small Business/Self-Employed (SB/SE) Collection for their review?

If Appeals determines that an investigation is needed or verification is required, information will be sent to Collection for their review.

2. Can alternative collection options be considered by Appeals?

With the exception of Collection Due Process (CDP) cases, collection alternatives will not be worked in Appeals.

3. Will Appeals investigate assets that were not investigated by SB/SE Collection?

No. It is the role of Collection to investigate, locate, value, and document assets, income, and collection potential. Given Appeals' role of impartiality, Appeals should not undertake actions that are the responsibility of Collection personnel and their managers. Note that there are legal prohibitions on the failure of the taxpayer to disclose information to Collection.

4. How do these changes apply to cases in which the taxpayer has unsuccessfully tried to resolve the issue through IRS compliance functions?

If the taxpayer timely responded to compliance with all available information, then the Appeals hearing officer will make a decision based on the documentation in the file.

5. Will Appeals raise new issues?

No. Appeals will not raise new issues.

6. What is considered a "new issue"?

A new issue is a matter not raised during compliance's consideration of a case.

7. Can Appeals raise issues addressing computational errors?

Yes. Appeals hearing officers will consider and make corrections to computational errors while working a case. Addressing a computational error is not considered a new issue.

8. What is the difference between a new issue and a new theory or argument?

A new issue is a matter not raised during compliance's consideration of a case. An Appeals hearing officer will not raise issues that were not part of the examiner's report. A new theory is a new position or alternative argument. Appeals may consider new theories or alternative legal arguments that support the parties' positions when evaluating the hazards of litigation. The hearing officer considers the disputed issues, but will not develop additional evidence that is not in the case file to support the new theory or argument. If a taxpayer raises a relevant new theory or alternative legal argument, the Appeals hearing officer may refer the relevant new theory or alternative legal argument to compliance for review and comment.

9. In considering a case, can the Appeals hearing officer consider what may be the best legal argument, even if neither party is making it? Or is this raising a new issue?

Yes. Consideration of various legal theories and arguments, even if not raised by either the taxpayer or government, is generally part of the process to determine the hazards of litigation. As such, it does not equate to raising a new issue.

10. Is a taxpayer precluded from raising a new/beneficial issue or presenting new information?

No. The taxpayer can raise a new issue or present new information; however, Appeals may return the case to Examination, releasing jurisdiction so that Examination will have the opportunity to examine it.

11. In cases originating from Examination functions, will Appeals consider new evidence or a new issue that was not previously reviewed by compliance?

If a taxpayer provides new evidence or raises a new issue that requires additional analysis or investigation, the case may be returned to Examination and jurisdiction released.

12. If jurisdiction of a case is returned to compliance so that they might consider new information submitted by a taxpayer, is compliance limited solely to addressing the new information?

No. Once Appeals has released jurisdiction of a non-docketed case to the originating function, it is solely within that function's purview to revisit and/or add new issues as they deem appropriate.

13. What is the minimum time that must remain on the statute of limitations for a case to go to Appeals?

For Examination cases, there must be at least 365 days remaining on the statute of limitations when a case is received by Appeals in order for Appeals to accept it. For Collection cases, there is no requirement for a minimum number of days remaining on the statute of limitations since the taxes have already been assessed.

14. Have there been any changes to the ex parte rules related to the recent guidance?

No. The ex parte rules continue to apply and are not affected.

15. Do the recent procedures apply when new information is received in a docketed case?

No. In general, they do not apply to docketed cases, but additional procedures are being developed and further guidance is forthcoming.

Examples:

- 1. Compliance challenged a tax-free exchange transaction under IRC 1031 on the basis that the relinquished and replacement properties were NOT like-kind properties. When the case is in**

Appeals, the AO determines that the properties WERE like-kind, but observes that the exchange was not completed in the requisite time period. Is this a new issue or new theory?

This is a new theory. The issue is the exclusion of the income from the like-kind exchange. Examination's theory is that they were not like-kind properties. The time period would constitute an alternative legal argument which is permissible under the new procedures. Appeals can consider the new legal argument in supporting the position that Examination has taken. Jurisdiction of the case will not be released.

- 2. The IRS audited a sole proprietor. On his filed 1040, the taxpayer's Schedule C reported Line 22, Supplies \$20,000 and Line 23, Taxes \$0. The taxpayer provided supporting information for only \$8,000 in supplies so the examiner disallowed \$12,000 and issued an RAR. The TP filed an appeal. The taxpayer reviewed their QuickBooks records prior to the Appeals conference and found that an error had been made. The taxpayer paid only \$8,000 for supplies but had expenses of \$12,000 for sales taxes that were not reported on Line 23. The taxpayer substantiation to the Appeals employee, noting the error. Is this a "new issue" requiring a return of the case to Examination?**

Yes. The case should be returned to Examination for consideration for the new issue (Line 23, Taxes) with new evidence. The taxpayer raised a new issue. The examiner's original review of the return and proposed adjustments didn't include a review of taxes since no deduction was reported on the Schedule C.

- 3. Examination audited a taxpayer for cancellation of debt. The taxpayer stated he never received the Form 1099C from the bank. He stated that it was bank's responsibility and he shouldn't be taxed on the debt cancellation. He requested an appeal. In Appeals, the taxpayer's attorney raised a new argument. The representative states the taxpayer was insolvent at the time the debt was cancelled, thus the cancelled debt could not be included in gross income. The representative provided evidence of the insolvency with a copy of the taxpayer's financial statements. Is this a "new argument or theory" requiring review and comment, or does the case need to be returned to Examination?**

If the taxpayer's financial statements required additional investigation or analysis to make a determination as to the insolvency claim, then it would constitute "new information" and jurisdiction would be released to Examination.